

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Mark and Linda Lessard

v.

Civil No. 06-cv-423-JD

Wilton-Lyndeborough Cooperative
School District

PROCEDURAL ORDER

Mark and Linda Lessard seek judicial review under the Individuals with Disabilities in Education Act ("IDEA") of the decision of the New Hampshire Department of Education that approved the Individual Education Plan ("IEP") and educational placement of the Lessards' daughter, S.L., by the Wilton-Lyndeborough Cooperative School District ("District"). The Lessards' claims arise from their daughter's 2005-2006 school year. The parties have filed their decision memoranda.

Last week, the First Circuit affirmed the District Court's decision in a separate case brought by the Lessards against the District. See Lessard v. Wilton Lyndeborough Cooperative School District, --- F.3d ---, 2008 WL 484042 (1st Cir. Feb. 25, 2008). In that case, the Lessards challenged the District's IEP and placement for S.L. for the 2004-2005 school year, arguing that the IEP was incomplete at the beginning of the school year, that the late IEP deprived S.L. of her right to a free and appropriate public education, and that the IEP did not adequately address S.L.'s needs in specific areas. The First Circuit ruled that any delay in the IEP was the Lessards' fault and that they misunderstood the standard and requirements imposed by the IDEA.

The Lessards raise the same or similar claims here based on the theories they relied on previously. The First Circuit's recent decision establishes the governing standard, which will likely strengthen or undermine at least some of the parties' claims, theories, and arguments presented in the decision memoranda. As no decision has issued in this case, before the court begins the review process, it would be appropriate for the parties to review their positions in light of the First Circuit's decision in Lessard.

Conclusion

After carefully reviewing their claims, theories, and arguments as presented in their decision memorandum, the Lessards shall either file a voluntary dismissal of their case, if that is appropriate, or file a supplemental memorandum that addresses their claims in light of the decision in Lessard. The Lessards shall make their filing **on or before March 17, 2008**. The District shall file its response **within fifteen (15) days** of the date of the Lessards' filing.

SO ORDERED.



Joseph A. DiClerico, Jr.
United States District Judge

March 3, 2008

cc: Katherine W. Bubar, Esquire
Jennifer A. Eber, Esquire
Eric R. Herlan, Esquire
Richard L. O'Meara, Esquire